FILED
11-09-06
02:46 PM

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion into the application of the California Environmental Quality Act to applications of jurisdictional telecommunications utilities for authority to offer services and construct facilities	R. 06-10-006

OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES

In accordance with Rule 6.2 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure and the schedule set forth in Rulemaking (R.) 06-10-006, the Division of Ratepayer Advocates (DRA) submits these Opening Comments in response to the identified issues regarding the implementation of the California Environmental Quality Act (CEQA) as it pertains to jurisdictional telecommunications utilities. Silence on a particular issue should not be construed as assent.

I. INTRODUCTION

Applying CEQA review to telecommunications utilities in an equitable manner is a complicated issue due to the disparate and piecemeal regulatory requirements that have been imposed on various classes of carriers. DRA supports the goal of this rulemaking to provide as much uniformity and equity to the CEQA review process as possible because such an outcome will provide the most competitive choices for consumers. DRA also recognizes that the environment has an impact on all consumers in California, and seeks to ensure that CEQA requirements are being met. There may be some practical difficulties in achieving a truly level playing field, and, although DRA's

recommendations may change upon considering the comments and specific proposals of other parties, at this time, we offer the following thoughts and tentative suggestions for streamlining CEQA review for carriers, in order to make the process as equitable as possible for all carriers.

II. DISCUSSION

A. Question One: How can we best comply with CEQA while maximizing the benefits deployment of advanced telecommunications facilities bring to this State? Parties are directed to develop proposals for how the Commission can comply with CEQA requirements and to comment on how these proposals are consistent with California's clearly articulated policy favoring the deployment of advanced telecommunications services.

The Commission has stated its intent in this proceeding to strike a balance between applying CEQA to telecommunications projects and ensuring that its CEQA application does not impede the development of advanced telecommunications services.[1] DRA agrees with the Commission that the current regulatory framework has resulted in barriers to entry for new competitive telecommunications providers that incumbent and certain grandfathered telecommunications carriers do not experience. Ratepayers benefit from having access to a wide array of telecommunications choices, and it is also in ratepayers' interest to avoid detrimental impacts on the environment. Accordingly, DRA supports the examination in this proceeding of modifying the current CEQA process to level the playing field as much as possible; however, DRA cautions that the Commission should not entirely abdicate its role in applying CEQA to carriers' construction activities.

In order to rectify this competitive inequity, the Commission could decide in this rulemaking to impose a different or new set of regulations or requirements on *all* telecommunications carriers regarding CEQA compliance. On the other hand, perhaps in recognition that imposing additional CEQA requirements on previously grandfathered carriers may not promote deployment of advanced telecommunications services, the

[1] OIR at 18.

Commission may decide to modify its existing regulatory requirements for only those carriers that are currently subject to more onerous CEQA requirements. DRA proposes a streamlined review process, applicable to those carriers currently subjected to CEQA requirements that, while not applying to all carriers, will go far in leveling the playing field.

B. Question Two: Does CEQA require review of network expansions by telecommunications carriers under our jurisdiction that already have Commission authority to serve the entire state or a specific service territory? We also request parties to provide us with a legal basis for their conclusions.

The text of CEQA does not, in and of itself, require or exempt telecommunications carriers from its review; whether or not CEQA review is required depends on whether a state or local agency must issue a "discretionary decision" for certain activity. Specifically, CEQA requires governmental review/approval of environmental impacts with regard to "discretionary projects" proposed to be carried out or approved by public agencies, including, for example, the issuance of zoning variances, and conditional use permits.[2] CEQA does not apply to, among other things, "ministerial projects" proposed to be carried out or approved by public agencies, emergency repairs to public service facilities necessary to maintain service, projects which a public agency rejects or disapproves, or classes of projects designated as "exempt" from CEQA pursuant to Pub. Res. Code Section 21084.[3] Thus, CEQA applies to Commission decisions that involve: i) discretionary decisions, ii) an activity that may have significant effects on the environment, and iii) activities that fall within the definition of a "project."[4] In other words, where the Commission deems a particular activity subject to its "discretionary

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[2] Pub. Res. Code Section 21080(a).

[3] Pub. Res. Code Section 21080(b).

[4] OIR at 4. This Commission's Rules of Practice and Procedure provide that CEQA applies to: applications for authority to undertake any projects that are subject to the California Environmental Quality Act of 1970, Public Resources Code Sections 21000 et seq. (CEQA) and the guidelines for implementation of CEQA, California Administrative Code Sections 15000 et seq., shall be consistent with these codes and this rule. *See* Rule 2.4.

decision" and that activity may have significant environmental effects, the activity is subject to the Commission's CEQA review.

As the OIR explains, under the Commission's current regulatory framework, certain carriers do not have to obtain CEQA review at the *Commission* prior to construction of their networks while other carriers must obtain CEQA review for the same activity. Because incumbent local exchange carriers ("ILECs") long ago received their authority to serve the state without restrictions on their construction ability, ILECs do not need to apply for approval or "discretionary decision" of the CPUC prior to undertaking construction for expanding their network.[5] Other competitive local exchange carrier ("CLCs") receiving CPCNs prior to December 1999 obtained a "batched mitigated negative declaration" that effectively provides them with authority to undertake construction throughout the state, with certain conditions. Finally, subsequent to D.99-12-050, some CLCs received restricted "limited" facilities-based authority to provide service throughout the state.[6] Thus, the current regulatory framework at the Commission clearly imposes more CEQA hurdles for competitive entrants that are not grandfathered.

C. <u>Question Three</u>: Could a multi-level system of CEQA review, such as the one set forth for electric utilities in GO 131-D, be developed for application to the telecommunications industry? We request parties to provide concrete definitions of the various proposed levels and to compare the extent of construction of various types of telecommunications projects with the type of

[5] Carriers "grandfathered" from obtaining CEQA review/approval at the Commission (such as ILECs or CLCs that received CPCNs prior to December 1999) may need to obtain a discretionary decision from another state or local agency, to the extent that the agency's rules or procedures call for the agency to issue a discretionary decision approving the activity in question.

[6] Because their CPCN authority expressly requires the CLCs to obtain Commission approval prior to undertaking certain construction activity, these CLCs are required to obtain CEQA review/approval if the activity constitutes a project that may have significant environmental impacts. For example, in D.99-12-025 and D.99-12-050, the Commission explained that CLCs receiving "limited facilities-based" authority may undertake activity such as installing equipment within previously existing buildings or structures without CEQA review, but that activity such as digging trenches would require an additional application for CEQA approval.

distribution-level construction done by electric utilities for which no CEQA review is required.

DRA believes that a multi-level approach similar to that used for electric utilities via GO 131-D is a reasonable approach. If used, it would provide an easy and unambiguous way to provide CEQA review. However, while the process used for electric utilities was easily determined by using specifically defined transmission levels,[7] there are no similarly easy criteria based on telecommunications transmission levels or capacity that could be applied to telecommunications utilities.

Nonetheless, DRA believes that one possible approach in the telecommunications context would be to recognize certain classes of activity that are exempt from CEQA approval (as the Commission already does), such as the placement of equipment *in* existing buildings and structures.[8] For construction activities consisting of the placement of equipment *on* existing buildings and structures no Commission approval is necessary if: 1) that activity results in no significant visual impact, and 2) that activity does not take place on or adjacent to a particularly sensitive environment.[9] If these conditions are not met, then Commission approval is necessary, and construction activity without an environmental review is not allowed when any of the conditions identified in CEQA Guideline 15300.2 are present.[10] These criteria apply to both new construction and routine repair and maintenance.

Applying these and other levels of review for different types of activity could create a multi-level review process. Indeed, the streamlined review process discussed below – which is a tiered system of review that the Energy Division currently applies to

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[7] OIR at 20.

[8] See D.99-12-025 (recognizing that this activity is exempt from CEQA review and permitting even "limited"- facilities based CLCs to undertake this activity without additional CPUC CEQA review).

[9] Examples of particularly sensitive environments include, but are not limited to, endangered species habitat, wetlands, and known cultural heritage sites.

[10] Those conditions are: particularly sensitive environments, significant cumulative impacts, significant environmental effects due to unusual circumstances, possible damage to scenic resources within state scenic highways, hazardous waste sites, and possible adverse changes in the significance of a historical resource.

telecommunications projects – currently provides a type of multi-level review for carriers, and the Commission should formalize this process as recommended below.

D. Question Four: Would it be appropriate to use the process developed in GO 159-A, and the specific procedures in these rules for wireless carriers, in the Commission's application of CEQA to other telecommunications utilities under its jurisdiction?

1. With Certain Exceptions, GO 159-A Generally Exempts Wireless Carriers from CEQA Review by this Commission.

In order properly to assess whether or not it would be appropriate to apply the process and procedures developed in GO 159-A to other telecommunications carriers within the Commission's jurisdiction, it is important to understand that, rather than involving "the Commission's application of CEQA" to wireless carriers, the provisions of GO 159-A generally exempt those carriers from CEQA review by the Commission.[11] While one of GO 159-A's stated goals is to ensure that the potential environmental impacts of cellular facilities "are reviewed and considered in a manner consistent with the California Environmental Quality Act (CEQA)," in that Order the Commission nevertheless "generally defer[s] to local governments [the authority] to regulate the location and design of cell sites and MTSOs [Mobile Telephone Switching Offices]," including the process of CEQA review.[12] Accordingly, any consideration of whether to apply the provisions of GO 159-A to other jurisdictional telecommunications carriers must weigh the appropriateness as well as legality of extending this general exemption from Commission CEQA review to those carriers as well.[13]

2. Extending the Provisions of GO 159-A to Other Telecommunications Carriers Effectively Would

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[11] General Order No. 159A, "Rules Relating to the Construction of Commercial Mobile Radio Service Facilities in California," adopted May 8, 1996, Section II B. at 3.

[12] GO 159A, Section II A at 3.

[13] Of course, extending such an exemption to the two large ILECs – AT&T and Verizon – would be superfluous, as they already "have been authorized to build out their networks without further review from this Commission." OIR at 9.

Remove Those Carriers from Any Further CEQA Review by this Commission.

With regard to the legality of applying the GO 159-A process to other carriers, the Commission should take into consideration the views of the California Attorney General (AG) expressed in its Comments in the earlier CEQA proceeding (R.00-02-003). In those Comments, the AG expressed concern that the Commission, in the process of considering changes to the inequities in its current CEQA review processes for wireline carriers, not seek to "avoid its CEQA responsibilities altogether under the rubric of leveling the playing field" amongst those carriers.[14]

If, as the current OIR suggests, the process and procedures developed for wireless carriers in GO 159-A were applied to the siting, design, and construction of telecommunications facilities by the other telecommunications carriers under the Commission's jurisdiction, the result would be the removal of all of its remaining requirements for CEQA review, except in cases of clear, site-specific conflicts with state interests.[15] Such a change would raise further concerns about the Commission's compliance with CEQA, as well as contradict the Commission's stated intent in this OIR to "[develop] clear, pragmatic and effective policies, programs and requirements for *complying with the Commission's obligations under CEQA*."[16]

The OIR's suggestion that a CEQA review process or procedure similar to that applied to wireless carriers under GO 159-A might apply equally well to other telecommunications carriers under its jurisdiction raises the additional questions of which agency, under CEQA, is the "lead agency" for the review and approval of telecommunications construction projects; and whether, in the course of ceding its authority to conduct CEQA reviews of the latter carriers to local governments, the Commission would be meeting its remaining responsibilities under CEQA. As the public

[14] Comments of the California Attorney General in Response to Assigned Commissioner's Ruling Requesting Comments, May 12, 2006, at 1-2.

[15] OIR at 25.

[16] *Id.* at 3, emphasis added.

agency that has the principal responsibility for regulating the activities of the telecommunications utilities under its jurisdiction, the Commission should consider whether it should abdicate its responsibilities as lead agency under CEQA by ceding review under CEQA to local governments.[17]

3. The Siting and Construction of Wireline Telecommunications Facilities May Have Potential Environmental Impacts that Cannot Adequately Be Addressed by Local Governments.

Furthermore, the Commission should consider whether or not its stated reasons for deferring CEQA review for wireless carriers to local governments apply equally well to the wireline carriers it regulates. For example, the OIR states, with regard to GO 159-A, that "it is not proper for the state to micromanage the siting and construction of cellular facilities, which has *primarily local impacts*."[18] However, the siting and construction of wireline facilities could have cumulative environmental impacts that cut across several localities, and that perhaps cannot adequately or completely be addressed by local governments. In such circumstances, it would be neither appropriate nor proper for the Commission to cede its review authority under CEQA to local governments.

E. Question Five: Do any of the statutory or categorical exemptions set forth in CEQA and the CEQA Guidelines apply to projects by telecommunications carriers under our jurisdiction?

1. The Commission should use the ministerial project statutory exemption in complying with CEQA review.

The statutory exemption for "ministerial projects" may apply to certain types of telecommunications projects, such as wireless telecommunications projects.[19] Further, the ministerial project exemption may apply to the approval of individual utility service

[17] See OIR at 5-7. Second, it should consider whether, under such circumstances, it would be in compliance with its statutory responsibilities as a "responsible agency" under CEQA.

[18] *Id.* at 26, emphasis added.

[19] OIR at 26-27.

connections and disconnections,[20] as well as to the extent that the Commission determines to modify its existing regulatory requirements/process for telecommunications construction projects. However, the Commission should avoid seeking further statutory exemptions when the Commission can instead find ways to streamline the existing regulatory process.

2. The Commission should use categorical exemptions in complying with CEQA review.

Categorical exemptions are, and have been used, by the Commission in the past, and are an existing framework through which the Commission can clarify for carriers which types of projects do not require CEQA review.[21] There are many categorical exemptions set forth in the CEQA Guidelines that can be applied to telecommunications carriers under Commission jurisdiction, and that would not remove the Commission's authority as the lead agency for CEQA review of telecommunications projects.

Some categorical CEQA exemptions applicable to telecommunications utilities include:

- **Class 1**(Existing Facilities): sections "(b) [e]xisting facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services" and "(c) [e]xisting highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities"[22]

- **Class 2(** Replacement or Reconstruction): section "(c) [r]eplacement of a or reconstruction of existing utility systems and/or facilities involving negligible or no expansions of capacity"[23]

- **Class 3** (New Construction or Conversion of Small Structures) sections "(d) [w]ater main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve

[20] CEQA Guidelines, 14 Cal. Code. Reg., § 15268(b)(4).

[21] OIR at 26.

[22] CEQA Guidelines, 14 Cal. Code. Reg., § 15301.

[23] CEQA Guidelines, 14 Cal. Code. Reg., § 15302.

such construction" and (e) [a]ccessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences",[24]

- **Class 4** (Minor Alterations to Land): sections "(a) [g]rading on land with a slope of less than 10 percent, except that grading shall not be exempt in a waterway, in any wetland, in an officially designated (by federal, state or local government action) scenic area, or in officially mapped areas of severe geologic hazard such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist", "(b) [n]ew gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping", (c) [f]illing of earth into previously excavated land with material compatible with the natural features of the site", and "(f) [m]inor trenching and backfilling where the surface is restored", and "(g) [m]aintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies",[25] and

- **Class 32** (In-Fill Development Projects): sections "(a) [t]he project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations", "(b) [t]he proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses", "(c) [t]he project site has not value as habitat for endangered, rare or threatened species", "(d) [a]pproval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality", and "(e) [t]he site can be adequately served by all required utilities and public services."[26] DRA supports the use of these categorical exemptions in applying CEQA review.

3. The Commission should adopt a streamlined review process to meet CEQA requirements.

Using this list of categorical exemptions, DRA proposes that the Commission adopt a streamlined review process, one that is currently being employed by the Energy Division, which will bring all carriers closer to a uniform permitting process while still meeting CEQA requirements. Through this process, carriers may seek to apply the above

[24] CEQA Guidelines, 14 Cal. Code. Reg., § 15303.

[25] CEQA Guidelines, 14 Cal. Code. Reg., § 15304.

[26] CEQA Guidelines, 14 Cal. Code. Reg., § 15332.

set of categorical CEQA exemptions to their specific facilities-based project, and if approved at the staff level, avoid further CEQA review on that project. Carriers could submit an advice letter to the Energy Division staff requesting the staff's concurrence on the application of the requested categorical exemptions to the project. This process does not involve a public comment period, and would last between one and 21 days, resulting in either an approval or denial from staff. A large portion of submitted requests would likely qualify for the aforementioned exemptions, and thus quickly pass through this streamlined CEQA review process.[27]

For larger projects that require CEQA review, the carrier can submit a request to use the CEQA review conducted by another agency, if available. In this case, an Application would be required that would be open for comments for 30 days and be voted on by the Commission.[28] If the Commission approves the Application, the carrier can submit an advice letter to the staff for review under the streamlined process described above.

If it cannot use these processes, a carrier would be required to submit either a Project or Master EIR and be subject to the full CEQA review determined by this Commission. Using this streamlined review process, the Commission can comply with CEQA requirements for eligible carriers while also making the CEQA review process faster and less burdensome.

F. Question Six: Should we submit a request for a categorical exemption for certain types of actions by telecommunications carriers under our jurisdiction to the Office of Planning and Research? If so, what should be the scope of the recommendation to the Office of Planning and Research?

The Office of Planning and Research (OPR) provides legislative and policy research support to the Governor's Office on CEQA matters, and is "responsible for

[27] *See*, *e.g.*, "Opinion Modifying Newpath Networks, LLC Certificate of Public Convenience and Necessity," D.06-04-030, April 14, 2006, O.P. No. 7, at 10; and "Procedure for Obtaining CEQA Exemption for Distrubited Antenna System Networks," Attachment E.

[28] It is possible for carriers to request an expedition of the 30 day time period.

carrying out various state level environmental review activities pursuant to California Environmental Quality Act (CEQA)…."[29] DRA does not see a need for any new categorical exemptions at this time. However, we are open to the possibility that some additional categorical exemptions could possibly be appropriate. If additional exemptions are considered, a list of exceptions to those exemptions must also be identified in any proposal submitted to the OPR in order to meet statutory obligations to protect the environment.

G. Question Seven: Should we seek legislative relief from the current requirements of CEQA, perhaps in the form of a statutory exemption? We ask parties to comment on what type of legislative action would (1) provide the needed streamlining, (2) allow us to ensure compliance with CEQA and protection of the environment, (3) advance the goals of supporting deployment of advanced telecommunications, including broadband technologies and (4) promote widespread and vigorous competition?

For all the reasons discussed above, DRA does not support seeking legislative relief in the form of a statutory exemption, other than for ministerial projects. The Commission should reserve the right to conduct reviews of projects on an as-needed basis. We believe that compliance with CEQA can be obtained through the use of categorical exemptions and the streamlined review process previously discussed.

H. Question Eight: Should we consider using the Program EIR and/or the Master EIR for CEQA review for telecommunications carriers? Commenting parties should make any distinctions they deem appropriate as to whether there are certain policies and programs that they believe are appropriate for a Program and/or Master EIR, and other policies and programs that they deem not suitable for a Program and/or Master EIR.

In cases where a CLC that has limited facilities-based authority wishes to place route-specific backbone facilities that require new trenching or other significant

[29] *See* http://www.opr.ca.gov/about/About.html for a complete description of the Office of Planning and Research.

alterations to the physical landscape, it typically must file a full, project-specific EIR as a necessary component of the Commission's CEQA review process.[30] For "last-mile" projects, which involve connecting customers to an existing backbone, but where the provider often does not know in advance precisely what their project routes will be, a full, project-specific EIR also is required, though in these types of cases the carrier generally will file an EIR for an entire project area and, with Commission approval, submit specific route analyses and proposals at a later time via a streamlined, 21-day approval process.[31] Finally, for several carriers, the Commission has adopted a 21-day staff-level process allowing for the claiming of appropriate exemptions under CEQA or, alternatively, the use of already-existing CEQA documentation as the foundation for route-specific and "last-mile" construction proposals.[32]

In all cases where the Commission currently does CEQA reviews, it has used Project EIRs. While no major, route-specific telecommunications construction projects have been proposed in recent years, to the extent that non-ILECs should request such network build-out in the future, the Commission should consider using Program EIRs in such cases, particularly, for example, if a carrier plans to place a significant number of "last-mile" customer connections within the larger geographical area inclusive of the new backbone in the future. Similarly, the use of a Master EIR for an entire geographical area might be appropriate in circumstances where the Commission anticipates that later environmental review of portions of the area covered by an initial EIR might be necessary, either because of the cumulative environmental impact of the overall project, or because it anticipates that location-specific environmental impacts potentially may

[30] D.99-12-050 and D.99-12-025.

[31] *See, e.g., Matter of the Application of Looking Glass Networks, Inc. (U-6393-C) for a Certificate of Public Convenience and Necessity*, D.03-02-064.

[32] The Commission has adopted this streamlined advice letter process for three carriers: New Path Networks, ClearLinx, and Suneysis. *See*, *e.g.*, "Opinion Modifying Newpath Networks, LLC Certificate of Public Convenience and Necessity," D.06-04-030, April 14, 2006, O.P. No. 7, at 10; and "Procedure for Obtaining CEQA Exemption for Distrubited Antenna System Networks," Attachment E.

occur in the future, once the carrier decides on the specific placement locations of its "last-mile" project routes.

I. Question Nine: Should the Commission conclude that (a) the provision of telecommunications service over video service and broadband facilities is incidental to the provision of video service and broadband service and (b) we do not need to issue a discretionary decision prior to the construction of facilities also utilized to provide telecommunications services?

The OIR points out that, with respect to environmental review of facilities used to provide video service, AB 2987 "dictates that a local entity shall be the lead agency for any environmental review with respect to network construction, installation, and maintenance."[33] It further observes that "the facilities utilized to provide video service, and for which the franchise is granted and construction authorized by the relevant local entity, can also be used to provide broadband data and telecommunications services."[34] On this basis, the OIR tentatively concludes "that the provision of telecommunications services over such facilities is incidental to the provision of video and broadband services." However, in drawing this conclusion, the OIR appears to make an unsupported leap in logic by assuming that most, if not all, of the facilities associated with the provision of video services are facilities which are in fact (or are intended to be) used primarily for that purpose.

It is not necessarily the case that simply because facilities that are used to provide video services that those facilities are being used primarily for the purpose of providing video or broadband services. In fact, AT&T and Verizon, the two largest telecommunications carriers that are planning to provide video services to their California customers, plan to provide video/broadband primarily over their existing telecommunications facilities, which indicates that these facilities can provide a combination of video/broadband, and telecommunications. Because many companies

[33] OIR at 34.

[34] *Id.*

may seek to provide bundled telecommunications and video services today, these facilities could indeed be used to provide more than an "incidental" amount of telecommunications services.

The issue of determining the amount of use of a facility for "telecommunications" as opposed to broadband/video is difficult, however. In order to make a distinction between facilities that are primarily (as opposed to "incidentally") being used to provide telecommunications service, the Commission would need to determine the extent to which a given facility or group of facilities are (or are intended to be) used *primarily* to provide video as opposed to telecommunications service. But, it is unclear on what basis the Commission could use to make such a determination. The Commission would have to create a set of objective standards or criteria for assessing whether service over a given facility or facilities are "primarily" for the provision of video or telecommunications service.

DRA does not believe that the Commission has enough information at this time to determine that the provision of telecommunications services over video service and broadband facilities is "incidental" to the provision of video and broadband services. Moreover, as the OIR recognizes, both AT&T and Verizon already have full facilities-based authority to build-out their networks and network components within their respective service territories without Commission CEQA review.[35] This does not change regardless of whether the provision of telecommunications services over broadband or video facilities is determined to be "incidental." Any carriers currently grandfathered would be able to build such facilities without CEQA review (even if facilities were used for providing telecommunications), while CLCs that receive "limited" facilities-based CPCNs could potentially be subject to CEQA review for construction of facilities that would offer bundled telecommunications/video/broadband services. This does not help create a more equitable application of CEQA review.

[35] OIR at 9.

On the other hand, if the Commission determines that the provision of telecommunications services over such facilities is "incidental" to the provision of telecommunications services, and cedes its CEQA review authority to local agencies, this conclusion could equalize the CEQA review process and provide for more competition. However, this kind of a finding could result in a situation in which all carriers could eventually bypass Commission CEQA review by building broadband and video facilities, over which they happen to offer telecommunications service.

The Commission should carefully examine the ramifications and possible consequences of voluntarily giving up its discretionary authority over "the construction of facilities also utilized to provide telecommunications services."[36] Given the numerous questions and possible implications surrounding this issue, and keeping in mind the responsibilities of the Commission and the need for more equitable CEQA requirements, DRA is not ready to take a position on this issue yet. DRA is interested in whether carriers would prefer this type of CEQA review to be done at the local level or through the Commission, and will reply to any recommendations put forth by other parties on this issue.

III. CONCLUSION

For the reasons stated above, DRA recommends that the Commission approve a streamlined approval process for CEQA requirements, adopting the categorical exemptions discussed above.

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[36] *Id.* at 38.

Respectfully submitted,

/s/ NATALIE L. BILLINGSLEY

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November 9, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of "**OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES**" in **R.06-10-006** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[ ] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on November 9, 2006 at San Francisco, California.

/s/ ALBERT HILL
Albert Hill

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